

AMENDMENTS TO RULE 36

Rule 36 is amended as follows:

RULE 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or the application of law of fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. ~~[The request may, without leave of court, be served upon the plaintiff after filing of the complaint, and upon any other party with or after service of the summons and complaint upon that party.]~~ **Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).**

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow **or as the parties may agree to in writing, subject to Rule 29**, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney ~~[, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the complaint upon the defendant]~~. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions

of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a post assignment conference or at a designated time prior to trial. The provisions of Rule 37(a)[~~37~~](4) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of Admission.* Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a post assignment scheduling or conference order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(As amended, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; _____, 2000, eff. _____, 2000.)

ADVISORY COMMITTEE NOTE

The current CIT rule allows requests for admissions to be served, without leave of court, upon plaintiff after the complaint is filed and upon any other party with or after the summons and complaint are filed upon the party. Fed. R. Civ. P. 36(a) allows requests for admissions to be served, without leave of court or written stipulation, after the time specified in Rule 26(d). For reasons discussed at Rule 26(d)/(f), the Committee recommends tying service of the request for admissions to the Rule 26(f) conference rather than to the filing or service of the complaint.

Fed. R. Civ. P. 36(a)(1) imposes a response time of 30 days but the court or the parties may agree to shorten or extend the response time. Current CIT Rule 36(a)(1) only allows the court to shorten or extend the response time. The Committee recommends that the CIT adopt the provision that allows the parties to agree in writing to shorten or

extend the response time. The change will eliminate the cost of seeking to extend or shorten response time by motion. The recommendation is consistent with the Committee's recommendation pertaining to Rule 29.

The current CIT rule affords defendant 45 days (in contrast to 30 days in the Fed. R. Civ. P.) to respond. For reasons discussed under Rule 33(b), the Committee recommends adopting the Fed. R. Civ. P. 30-day response time to requests for admission.

The CIT rule refers to "postassignment" conference, and the Fed. R. Civ. P. to "pretrial" conference. The different language should be maintained for reasons discussed at Rule 16.